

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-400 (Sub-No. 5)

**SEMINOLE GULF RAILWAY, L.P.
- ADVERSE ABANDONMENT -
IN SARASOTA COUNTY, FL**

**REPLY OF SEMINOLE GULF RAILWAY
TO PETITION FOR WAIVER AND EXEMPTION**

**ENTERED
Office of Proceedings**

FEB 28 2011

**Part of
Public Record**

Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market St., Suite 1000
Philadelphia, PA 19103
215-640-8500
ehocky@thorpreed.com

Attorneys for Seminole Gulf
Railway, L.P.

Dated: February 28, 2011

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On February 7, 2005, Petitioners Palmer Ranch Holdings, Ltd., Palmer Ranch Holdings, Inc., Wynnstay Hunt, Inc., and Cheshire Hunt ("Petitioners") filed a petition seeking waivers of certain of the Board's abandonment regulations (the "Waiver Petition") in connection with an adverse abandonment action they propose to file against Seminole Gulf Railway, L.P. ("SGLR") with respect to a segment at the end of a branch line operated by SGLR, between MP SW 892.00 and MP SW 891.40 (the "Subject Line"). SGLR currently is using the Subject Line for car storage business, and also requires the use of the Subject Line to access a spur which has also been used for car storage and which provides access to three rail served facilities located just north of the Subject Line which SGLR believes have the potential for renewed future service. Accordingly, SGLR intends to vigorously oppose the adverse abandonment request. Further, if Petitioners are going to be permitted to proceed with this action, they should be granted only the most limited waivers that are appropriate to ensure that an adequate, complete evidentiary record is created, and that all potentially affected parties receive notice. SGLR, in this Reply, addresses the specific waivers requested by Petitioners.

Background

While a full factual background will be provided as part of its opposition, SGLR is presenting herein only a more limited background for the Board because SGLR believes that some context is necessary for the Board to review and rule on the requested waivers.

SGLR owns the rail facilities, and leases the underlying property, comprising approximately 129 miles of rail lines, including a branch line known as the Venice Branch.¹ The Venice Branch was a 12 mile line which ran between Sarasota and Venice, Florida. In STB Docket No. AB-400 (Sub-No. 3X), SGLR received authority to abandon the southern 12 miles of the Venice Branch. SGLR and CSXT ultimately sold the segment to the Trust for Public Land ("TPL") under the National Trails Act, 16 U.S.C. §1247(d) and the Board's interim trail use and railbanking regulations. As noted in the Waiver Petition, p. 3, a portion of the corridor has been developed into the Legacy Trail, a public recreational corridor for bicycling, skateboarding and running. Waiver Petition at 3. TPL and Sarasota County ultimately would like to see the Legacy Trail extending along the remainder of the Venice Branch into downtown Sarasota.

Petitioners do not indicate their interest in seeking the adverse abandonment in this case. They claim to be doing so for the benefit of SGLR – to save it expenses of maintenance and liability. Waiver Petition, pp. 3-4. However, the interest of the Petitioners is clearly more personal and economic – they are believed to be the developers of high-end residential properties along the Subject Line who clearly find the idea of an active rail line, or a public trail, in their back yard distasteful – even though the rail line long pre-dates the development.

¹ The land is leased from CSX Transportation, Inc. ("CSXT"). While Petitioners assert that CSXT has only an easement interest (Waiver Petition, p. 2), SGLR's valuation maps indicate that the property was transferred by quitclaim deed and that CSXT may have a fee interest. However, this would be an issue between CSXT and Petitioners, and would only be relevant if the adverse abandonment were to be granted.

While there are no shippers located on the Subject Line, SGLR has been using the Subject Line for car storage for SGLR freight cars. It has moved cars onto and off of the Subject Line as recently as December 2010. SGLR's police regularly patrol the area, and investigate complaints of trespassers or vagrants; although the complaints have been few. Additionally, there is a spur off of the Subject Line that provides access to three facilities located just north of the Subject Line that are rail-served. While they are not currently receiving rail service, SGLR believes there is a potential for renewed service as the economy and housing construction rebounds. SGLR has also used the spur for additional car storage. Because of how the switch to reach those facilities is configured, cars need to be pushed past the switch onto the Subject Line before they can be pulled on to the spur or into the facilities.² Thus, the forced abandonment of the Subject Line would preclude SGLR from being able to use the spur or to provide service to these facilities in the future.

Additionally if the Subject Line were abandoned without permitted the application of the public use and/or trail use provisions to be applied, then TPL and Sarasota County would lose their ability to extend the Legacy Trail. Further, abandonment would leave the southern rail-banked section of the Venice Branch as an island disconnected from the rail network, frustrating the railbanking condition imposed on that section.

Discussion

Initially, it should be noted by the Board that Petitioners did not serve a copy of the Waiver Petition on any concerned or potentially concerned parties, including SGLR in whose

² Petitioners have not included a map or any other evidence to show the location or configuration of the Subject Line or the remainder of the Venice Branch. Attached is a Google Earth picture on which SGLR has marked the Subject Line and the rail-served facilities.

name they will be filing for the adverse abandonment authority.³ While SGLR has actual notice of the filing (based on its fortuitous viewing of the filing on the Board's web site), the Board should require Petitioners to serve other potentially affected parties with a copy of the Waiver Petition and should give such parties a full opportunity to respond.

SGLR acknowledges that the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have in prior adverse abandonment or discontinuance proceedings granted waivers of particular regulatory requirements. However, in this case, where SGLR is continuing to use the Subject Line, the Board should not rely on waivers granted in previous adverse discontinuance proceedings where only a change in operators was being sought. Thus, while some limited waivers might be appropriate here, others clearly are not. The Board should ensure that any application and notice fully and adequately advise the Board and all interested parties before it considers the drastic relief requested by Petitioners.

SGLR responds to the specific waivers requested by Petitioners as follows:

1. Notice of Intent.

The requirements of the notice of intent to abandon or discontinue service are set forth in detail in 49 CFR §§1152.20 and 1150.21, and are designed to ensure that all affected parties proper receive adequate notice and have an opportunity to participate, and to ensure that the Board receives all necessary information to have a complete record. SGLR acknowledges that the Board will allow deviations from the standard form of notice in adverse abandonment proceedings. Petitioners have submitted a proposed form of notice. Waiver Petition, Attachment

³ Other potentially affected parties who should have been served include CSXT as the owner of the underlying property, and TPL and Sarasota County, as the developers of the Legacy Trail and affected public interests.

A. To the extent the Board denies or modifies any of the requested waivers, the form of notice would of course need to be modified to add back in the relevant provisions.

A. Service of Notice of Intent

SGLR does not object to Petitioners requested waiver of the requirements of 49 CFR §1152.20(a)(2) that notice be served on Amtrak (Amtrak does not operate in the area), or on the headquarters of labor organizations representing employees on the subject line (SGLR's employees are not represented). Waiver Petition, p.5.

In cases of adverse abandonment, the Board should require that all railroads involved be served – in this instance both SGLR as the owner of the rail facilities, and CSXT as the owner of the underlying land. Further, Petitioners should be required to serve TPL and Sarasota County as the developers of the adjacent Legacy Trail. *See Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL (“SGLR – Lee County”)*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004), slip op. at 2-3.

B. Posting of Notice of Intent

SGLR does not object to Petitioners' requested waiver of the requirements that notice be posted at each of the railroad's stations (there are none on the Subject Line).

C. Content of Notice of Intent

While changes to the required form of notice are permitted to be consistent with the waivers ultimately granted, Petitioners should otherwise be required to follow the prescribed text as closely as possible. *East St. Louis Junction Railroad Company - Adverse Abandonment - In St. Clair County, IL*, STB Docket No. AB-838 (served June 30, 2003), slip op. at 6 n.11. To the extent the requested waivers are not granted or modified, the content of the form of notice will

need to be conformed to the waivers granted. With respect to the proposed form of notice itself,

SGLR makes the following additional comments:

- The notice (line 4) should reference that only a portion of the Venice Branch is involved in this proceeding.
- The notice (lines 4-5) should reference that the rail line (tracks, ties, etc.) is owned and operated by SGLR, but that the right of way is owned by CSXT and leased to SGLR.
- The last line in the first paragraph of the notice should refer to documentation in the possession of "Applicants" not "railroad."
- As discussed above, SGLR does not agree with the description of the reasons for the abandonment application. SGLR does not believe that there is any public safety issue, nor that SGLR faces significant liability from continuing to own and operate the rail line. Rather, SGLR believes that Petitioners are filing for abandonment because they believe that having an operating railroad "in their backyard" will affect their adjacent/nearby developments.
- As discussed below, SGLR believes that public use, as well as trail use conditions should be available in this adverse abandonment proceeding. Accordingly, all references to public use conditions should be included in the notice.
- On page 3 of the form of notice (Waiver Petition, p. 14), the reference to the "Secretary" should be updated to conform to the current regulations ("Chief, Section of Administration, Office of Proceedings").

2. *Application and Related Requirements.*

A. *System Diagram Map*

SGLR does not oppose the requested waiver from the system diagram map requirements. Waiver Petition, p. 6. However, a map showing in detail the location of the Subject Line and its relation both to the Legacy Trail and to the remaining portion of the Venice Branch should be available to Petitioners and should be required.

B. Condition of the Properties

SGLR does not agree with Petitioners description of the condition of the Subject Line. Waiver Petition, pp. 6-7. However, SGLR does not oppose the requested waiver from the requirements that the application include the information described in 49 CFR §1152.22(b).⁴

C. Revenue and Cost Data

SGLR does not oppose the requested waiver from the requirements that the application include the information described in 49 CFR §1152.22(d). SGLR reserves the right to introduce such evidence in its protest if it elects to do so.

D. Environmental and Historic Reporting Requirements

SGLR opposes the requested waiver from the environmental and historic reporting requirements of 49 CFR §1152.22(c), §1152.22(f), and 49 CFR §§1105.7-1105.8. Waiver Petition, p. 7. Petitioners only justification is that the Board's Section of Environmental Analysis issued an Environmental Assessment of the adjoining line that was the subject of the abandonment in STB Docket AB-400 (Sub-No. 3X). Not only did that assessment *not* cover the Subject Line, but it was issued over seven years ago.

Under the National Environmental Policy Act and related acts, the Board is generally required in all cases involving Board action to review the environmental and historic impacts of the proposed transaction. Under the Board's regulations, it looks not only at the effects of the action on rail traffic, but also the effects of salvage, rerouting of traffic and other community impacts. The Board performs this review in all abandonment cases, even in those under its two year out of service exemption regulations. See 49 CFR §§1152.20(c), 1152.50(d)(4) (requiring

⁴ Petitioners have not requested, and SGLR has not granted, permission to enter onto the Subject Line to take photographs or otherwise. Anyone entering the property without permission and compliance with SGLR's requirements for entry, will be prosecuted for trespassing.

certification of service of the environmental and historic report), 1105.6(b)(2), and 1105.8(a). The Board generally requires compliance with the environmental and historic reporting requirements in all cases where salvage is likely following the grant of abandonment. *Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN*, STB docket No. AB-290 (Sub-No. 286) (served October 26, 2006), slip op. at 4.; *The City of Chicago, Illinois – Adverse Abandonment – Chicago Terminal Railroad In Chicago, IL*, STB Docket No. AB-1036 (served July 10, 2009), slip op. at 6. See also *Napa Valley Wine Train, Inc. - Adverse Abandonment - In Napa Valley, CA*, STB Docket No. AB-582 (served March 30, 2001) (denying waiver where line relocation for continued service was proposed). Petitioners have not given any justification for deviating from these requirements.

E. Abandonment Consummation Notice and One Year Authorization

SGLR opposes the requested waiver of the consummation notice requirement and one year authorization for consummation to the extent that they would deprive SGLR of the opportunity to salvage the tracks and other track material from the Subject Line if the adverse abandonment were granted. The requirements should be modified to provide that if the adverse abandonment were granted, that SGLR would have a one year period to salvage the Subject Line, and that it should file a notice of consummation once the salvage is completed. Further, the Board still needs to know when the consummation is finalized. *The City of Chicago, supra*, slip op. at 6.

F. Offer of Financial Assistance, Public Use and Feeder Line Provisions

SGLR acknowledges that the Board in other adverse abandonment proceedings has determined that the right to make an offer of financial assistance (“OFA”) under 49 USC §10904 and related regulations should not be available. *Norfolk Southern, supra*, at 4. Further, SGLR

does not believe that the right to make a feeder line application under 49 USC §10907 and related regulations is available in abandonment proceedings. Accordingly, SGLR does not oppose the waiver of the application of those provisions.

SGLR opposes the requested waiver of the right to request a public use condition. Particularly in this instance where the Petitioners do not in any way represent the public interest, public agencies should have the right to request the imposition of a public use condition if they determine that the property could be used or useful for a public purpose, including trail use. That the Board would have determined that the rail line is not needed for future rail service may affect whether an OFA is appropriate, has no bearing on whether an alternative public use would be. Indeed, requests for public use conditions are often used in concert with interim trail use requests to prevent disposition of the property while trail use is being negotiated.⁵ The Board has previously held that public use and trail use procedures involve post-abandonment activities that can be addressed in the decision on the merits of the application. *See SGLR – Lee County, supra* slip op. at 4; *Napa Valley Wine Train, Inc. - Adverse Abandonment - In Napa Valley, CA*, STB Docket No. AB-582 (served March 30, 2001). *Compare East St. Louis Junction Railroad, supra* at 4 (waiving public use procedures when adverse abandonment is brought by state agency for public use). There is no justification for waiving the public use requirements at this time.

G. Federal Register Notice

Petitioners have attached an amended form of Federal Register Notice to the Waiver Petition. Waiver Petition, Attachment B, p. 16-17. Petitioners proposed modifications to the Federal Register notice track its proposed notice of adverse abandonment, and therefore suffer

⁵ Petitioners have not sought a waiver from the right to request interim trail use.

from the same flaws raised above. SGLR thus opposes the requested waiver for and to the same extent as it opposed the changes to the form of notice of intent.

Further, SGLR objects to the proposed language regarding the submission of an interim trail use request, and the proposed requirement that a request address the issue about whether a trail use condition would be consistent with an adverse abandonment. Petitioners have not requested a waiver of the trail use requirements, nor have they addressed why such provision would not be consistent with the cessation of rail service. As such there is no justification provided for modifying the trail use language in the Board's standard form of Federal Register notice (49 CFR §1152.22(i)), or for the imposition of additional requirements on any person requesting trail use.

3. *Waiver of Filing Fees.*

Petitioners have asked the Board to waive or reduce the filing fee for the proposed application. In determining whether to waive or reduce the filing fee, the Board should consider both its general policies for waiver, and that this will be a contested proceeding. While the Board generally exempts governmental agencies from its filling fee requirements, it does not, and should not, do so for private developers except in "extraordinary situations." See 49 CFR §1002.2(e). Despite Petitioners' suggestion that they are seeking this abandonment in the "public interest," it is clear that they are only seeking to promote their private interests. Further, Petitioners have not submitted any financial information that would indicate that the payment of the full filing fee required by the Board's regulations would be an undue hardship.

Conclusion

For the foregoing reasons, SGLR requests first that the Board require that Petitioners serve the Waiver Petition on all parties that would potentially be affected by the abandonment, and that such parties be given an opportunity to respond. Further, SGLR requests that any order of the Board limit the waivers requested as discussed above. Notwithstanding any waivers that are ultimately granted the Board should make clear in its order that Petitioners still have the burden of supporting its case demonstrating that the public convenience and necessity require this abandonment with sufficient relevant evidence.

Respectfully submitted,



Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market St., Suite 1000
Philadelphia, PA 19103
215-640-8500
ehocky@thorpreed.com


Attorneys for Seminole Gulf
Railway, L.P.

Dated: February 28, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served on the following persons
by electronic delivery:

Mark F. ("Thor") Hearne, II
Meghan S. Largent
Lindsay S.C. Brinton
Arent Fox, LLP
112 South Hanley Road, Suite 200
Clayton, MO 63105
thornet@ix.netcom.com
thor@arentfox.com
largent.meghan@arentfox.com
brinton.lindsay@arentfox.com


Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market St., Suite 1000
Philadelphia, PA 19103
215-640-8500
ehocky@thorpreed.com

Attorneys for Seminole Gulf
Railway, L.P.

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